

through the Maritime Subsidy Board or any predecessor or successor, had advised the Operator to be ineligible to be so included, or any costs collectible from insurance, or from any other source.

Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval of the correctness of the amount stated to have been due, nor a waiver of any right of remedy the Maritime Administration, or Secretary of Transportation, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement, or otherwise.

I further depose and say that this affidavit is made for and on behalf and at the direction of the Operator for the purpose of inducing the Maritime Administration to make a payment pursuant to the provisions of the aforesaid Operating-Differential Subsidy Agreement, as amended.

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this _____ day of _____.

My commission expires _____
Notary Public _____

(3) The subsidized operator shall furnish its own supply of supporting schedules and affidavit.

§ 282.32 Appeal procedures.

(a) *Appeals of annual or special audits.* An operator who disagrees with the findings, interpretations or decisions in connection with audit reports of the Office of the Inspector General and who cannot settle said differences by negotiation with the Contracting Officer may submit an appeal to the Maritime Administrator from such findings, interpretations or decisions in accordance with part 205 of this chapter.

(b) *Appeals of administrative determinations—(1) Policy.* An operator who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal from such findings, interpretations or decisions as follows:

(i) Appeals shall be made in writing to the Secretary, Maritime Subsidy Board, Maritime Administration, within 60 days following the date of the document notifying the operator of the administrative determination of the Contracting Officer. In the appeal to the Secretary, the operator shall indicate whether or not a hearing is desired.

(ii) MARAD will notify the appellant in writing if a hearing is to be held and

whether the operator is required to submit additional facts for consideration in connection with the appeal.

(iii) When a decision has been rendered, the Board shall notify the appellant in writing.

(2) *Appeal to the Secretary of Transportation.* An operator who disagrees with the Board may appeal such findings and determinations by filing with the Secretary of Transportation, a written petition for review of the Board's action. The petition shall be filed in accordance with provisions of the Department of Transportation pertaining to Secretarial review.

(3) *Hearings.* MARAD shall follow the Rules of Practice and Procedure (46 CFR part 201, subpart M) for hearings granted under 46 U.S.C. 1176 and 46 CFR 282.32.

PART 283—DIVIDEND POLICY FOR OPERATORS RECEIVING OPERATING-DIFFERENTIAL SUBSIDY

Sec.

283.1 Purpose.

283.2 Definitions.

283.3 Dividend policy criteria.

283.4 Alternate standards.

283.5 Notification and reporting requirements.

AUTHORITY: Sec. 204(b) Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1026); Dept. of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

SOURCE: 45 FR 37445, June 3, 1980, unless otherwise noted.

§ 283.1 Purpose.

(a) The rules of this part establish requirements for the declaration and payment of cash dividends by operators receiving operating-differential subsidy (ODS) under Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 et seq.) (Act). This part shall be applicable immediately unless otherwise provided for in the operators' operating-differential subsidy agreement (ODSA).

(b) One of the purposes of the Act is to foster the development and encourage the maintenance of the United States Merchant Marine. Subsidized operators are required to maintain the

financial ability to assure adequate and timely reinvestment in the merchant marine. The policy contained herein takes into consideration the operators' contractual obligations to construct and acquire vessels, retire debt obligations secured by ship mortgages and maintain adequate working capital. However, this policy also takes into consideration the operators' need to attract new capital to the industry by paying dividends which are appropriate in light of the operators' earnings and long-range financial position.

§ 283.2 Definitions.

(a) *Long-Term Debt* means, as of any date, the total notes, bonds, debentures, equipment obligations and other evidence of indebtedness that would be included in Long-Term Debt in accordance with generally accepted accounting principles, less the balance of escrow fund deposits attributable to the principal of obligations guaranteed pursuant to Title XI of the Act, where deposits are required in accordance with § 298.33. Capitalized Lease Obligations shall be included, but deferred income taxes shall not be included.

(b) *Capitalized Lease Obligations* means, as of any date, an amount (excluding amounts already included in Long-Term Debt) equal to the sum of: (1) The present value of all capital leases, as defined and computed in accordance with the Financial Accounting Standards Board Statement No. 13, Accounting for Leases (FASB-13), and (2) ½ of the minimum rentals (less operating components such as insurance, maintenance, property taxes, etc.) of all operating leases, as defined and includable in footnotes to the financial statements in accordance with FASB-13, for shipping property, i.e., vessels, containers, barges, terminals and other similar property.

(c) *Equity* (net worth) means, as of any date, the total of paid-in-capital stock, paid-in-capital, retained earnings and all other amounts that would be included in Equity in accordance with generally accepted accounting principles, but adjustable as follows. The net worth shall be reduced to the extent that the net worth computation includes any receivables from an affiliate of the company or any stockholder,

director, officer, or employee (or any member of the employee's family) of the company, or of an affiliate of the company, other than (1) reasonable advances to affiliated agents required for the normal operation of the company's vessels, or (2) current receivables arising out of the ordinary course of business, and which are not outstanding for more than 120 days.

(d) *Floor net worth* means net worth computed as follows: The net worth requirement for existing operators shall be initially set at the greater of 90 percent of the operator's existing net worth or 50 percent of the operator's long-term debt contained in its audited financial statements for the year ended December 31, 1979. A new operator's net worth requirement shall initially be set at the greater of 90 percent of existing net worth or 50 percent of the original long-term debt issued with respect to the operator's vessel(s).

(e) *Adjusted floor net worth* means that the floor net worth requirement may be reduced with consent of the Maritime Administrator in an amount equivalent to amounts an operator could have paid in dividends under the previous policy set forth in this regulation prior to amendment in 1980, in the three years prior to the date of effectiveness of this policy, but chose not to pay out in dividends. The floor net worth requirement for both existing operators and new operators shall be further adjusted from time to time as follows:

(1) The net worth requirement shall be increased by an amount equal to 50 percent of the original long-term debt to be issued with respect to new vessel construction (with respect to existing operators, new vessel construction contracts executed after December 31, 1979), and

(2) the net worth requirements shall be decreased by an amount equal to 50 percent of the original long-term debt issued with respect to vessels which are removed from service or otherwise transferred or sold.

(f) *Working capital* means the difference between current assets and current liabilities, both determined in accordance with generally accepted accounting principles, adjusted as follows: